

14. A RESOLUTION AUTHORIZING AN ENGINEERING SERVICES AGREEMENT

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STAFF REPORT \_\_\_\_\_

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QUESTIONS FROM COUNCIL ON STAFF REPORT \_\_\_\_\_

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RESOLUTION NO. R-58-18

A RESOLUTION AUTHORIZING THE EXECUTION OF AN ENGINEERING SERVICES AGREEMENT BETWEEN THE CITY OF PULLMAN AND J-U-B ENGINEERING, INC FOR THE PURPOSE OF PROVIDING CONSTRUCTION ENGINEERING SERVICES FOR THE WWTP ULTRAVIOLET LIGHT DISINFECTION AND MISCELLANEOUS IMPROVEMENTS PROJECT.

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DISCUSSION \_\_\_\_\_

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ACTION TAKEN \_\_\_\_\_

NOTES:

# REQUEST FOR COUNCIL ACTION

For Meeting of: 7/17/18

## ACTION REQUESTED:

Authorize an Engineering Services Agreement with J-U-B Engineers, Inc. for engineering services during construction of the Waste Water Treatment Plant (WWTP) UV Disinfection and Miscellaneous Improvements project.

## BACKGROUND:

At their May 15<sup>th</sup> meeting, Council authorized award of the construction contract to McClure and Sons, Inc. for the WWTP UV Disinfection and Miscellaneous Improvements project. Design of this project was previously completed by J-U-B Engineers, Inc. The Engineering Services Agreement executed for the project design work did not include assistance during construction.

City staff have negotiated a scope and budget for engineering construction services, which includes technical assistance, interpretations, submittal reviews, and clarifications among other things as needed during construction. The full scope of work is attached as Exhibit A to the Engineering Services Agreement. The project is to be performed on a cost-reimbursable basis with an estimated budget of \$183,700.00. The agreement uses the city's standard consultant agreement form. Funding will be from the Utility Capital Projects budget of the Utility Fund.

The selection of J-U-B for this construction work is based on a formal selection process that was utilized when J-U-B was selected to complete a 30% wastewater reuse design. As part of that process the city reserved the right to continue into final design with the selected consultant. The UV project is a component needed for future reuse and as such this UV project was designed accordingly, in case the City should decide to construct the remaining wastewater reuse facilities.

## RECOMMENDATION:

Adopt the attached resolution authorizing an Engineering Services Agreement with J-U-B Engineers, Inc. for engineering services during construction of the WWTP UV Disinfection and Miscellaneous Improvements project.

## FISCAL IMPACT:

\$183,700.00  
403.3386.594.35.41.20  
BARS Code Number

## SUBMITTED BY:

Name Clayton Forsmann  
Title Deputy Public Works Director  
Dept. Public Works

## ATTACHMENTS FOR COUNCIL REVIEW/ACTION:

1. Resolution No. R-58-18

## REVIEWED BY:

	Initial	Date
Department Head	<u>KZ</u>	<u>7-9-18</u>
City Supervisor	<u>ARL</u>	<u>7.10.18</u>
City Attorney	<u>[Signature]</u>	<u>7-12-2018</u>
(As to Form)		

RESOLUTION NO. R-58-18

A RESOLUTION AUTHORIZING THE EXECUTION OF AN ENGINEERING SERVICES AGREEMENT BETWEEN THE CITY OF PULLMAN AND J-U-B ENGINEERING, INC FOR THE PURPOSE OF PROVIDING CONSTRUCTION ENGINEERING SERVICES FOR THE WWTP ULTRAVIOLET LIGHT DISINFECTION AND MISCELLANEOUS IMPROVEMENTS PROJECT.

WHEREAS, the City Council for the city of Pullman has before it an Agreement entitled Engineering Services Agreement which is attached hereto and marked as Exhibit "A"; and,

WHEREAS, this Council believes it to be in the best interests of the city of Pullman to authorize the execution of said Agreement; now, therefore,

IT IS HEREBY RESOLVED that the Mayor and the city clerk be and they are hereby authorized and directed to execute the Agreement attached hereto and marked as Exhibit "A" and to deliver an executed original thereof to J-U-B Engineering, Inc.

IT IS FURTHER RESOLVED that the Mayor and city clerk are each hereby authorized and directed to take such further action as may be appropriate in order to effect the purpose of this Resolution and the Agreement authorized thereby.

ADOPTED by the City Council of the city of Pullman at a regular meeting held on the \_\_\_\_\_ day of \_\_\_\_\_, 2018.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2018.

\_\_\_\_\_  
Mayor Glenn A. Johnson

ATTEST:

\_\_\_\_\_  
City Clerk Dee Stiles-Elliott

Approved as to Form:

\_\_\_\_\_  
City Attorney Laura D. McAloon

## ENGINEERING SERVICES AGREEMENT

THIS AGREEMENT, made and entered into on this \_\_\_\_\_ day of \_\_\_\_\_, 2018, by and between the CITY OF PULLMAN, WASHINGTON, whose address is 325 SE Paradise Street, Pullman, WA 99163, hereinafter called the "CITY," and the consulting firm of J-U-B Engineers, Inc. whose address is 201 S. Jackson, Moscow, ID 83843, the location at which work will be available for inspection, hereinafter called the "CONSULTANT." The contact person for the CITY shall be Kevin Gardes, P.E. The contact person for the CONSULTANT shall be Cory Baune, P.E.

WHEREAS, the CITY desires to have engineering performed and services during construction of the UV Disinfection and Miscellaneous Improvements project at the Waste Water Treatment Plant (WWTP); and

WHEREAS, the CONSULTANT has represented and by entering into this Agreement now represents, that CONSULTANT is in full compliance with the statutes of the State of Washington for registration of professional engineers and that all personnel to be assigned to the work required under this Agreement are fully qualified to perform the work to which they will be assigned in a competent and professional manner; and

WHEREAS, the CONSULTANT desires to do the work set forth in the Agreement upon the terms and conditions set forth below,

NOW, THEREFORE, in consideration of the terms, conditions, covenants and performances contained herein below, the parties hereto agree as follows:

### **SECTION I: OBJECTIVES AND SCOPE OF WORK**

The objectives of this project are to provide construction service assistance to the CITY including interpretation of the contract documents; review of shop drawings, samples, submittals, and requested changes to the contract work; provide documentation for operation and maintenance; provide assistance during setup, and conduct periodic site visits and a final inspection for the UV Disinfection and Miscellaneous Improvements project. The full scope of services to be performed by the CONSULTANT is as indicated in the attached Exhibit A.

During the project execution, the CONSULTANT shall provide supporting information as may be pertinent and necessary, or as may be requested by the CITY, in order for the CITY to pass critical judgment on the design features of the project. The CONSULTANT shall make such minor changes, amendments, or revisions in the details of the work as may be required by the CITY provided that they are within the scope of work and are requested prior to final review by the CITY. This item does not constitute an "Extra Work" item as related in Section VIII of this Agreement. When alternates are being considered, the CITY shall have the right of selection.

The design shall be checked by a senior review by the CONSULTANT. The CONSULTANT will be held responsible for the accuracy of the work, consistent with Section XV of this Agreement.

Exhibit "A"

## **SECTION II: ITEMS TO BE FURNISHED TO THE CONSULTANT BY THE CITY**

The CITY will furnish the CONSULTANT items on file which may relate to the project, including:

- Data in CITY's possession relating to CONSULTANT's services on the Project.

## **SECTION III: DOCUMENTS TO BE FURNISHED BY THE CONSULTANT**

The following documents, exhibits or other presentations for the work covered by this Agreement shall be furnished by the CONSULTANT to the CITY upon completion of the work specified in Section I. All such material shall become and remain the property of the CITY and may be used by it without restriction other than as described in Section XXII, Reuse of Project Documents.

- Monthly invoices
- Technical content for change orders and interpretations regarding conformance of the work to the contract documents as needed
- Written responses and clarifications to Contractor for requests for information
- Written appraisal of the suitability of materials and equipment submitted by the Contractor for use on the project (submittal responses)
- Electronic Operations and Maintenance (O&M) manuals, as defined in Exhibit A
- Written final notice documenting completion of the project work

## **SECTION IV: TIME OF BEGINNING AND COMPLETION**

The CONSULTANT shall not begin work under the terms of this Agreement until authorized in writing by the CITY. The CITY reserves the right to authorize Tasks individually and eliminate Tasks as it deems appropriate. All work authorized by this Agreement shall be completed within 90 calendar days after the completion date established in the contract documents for the construction project.

## **SECTION V: PAYMENT**

The CONSULTANT shall be paid by the CITY for completed work or services rendered under this Agreement as provided for hereinafter. Such payment shall be full compensation for work performed or services rendered and for all labor, materials, supplies, equipment, and incidentals necessary to complete the work.

1. Payment for all consulting services for this project shall be on a cost-reimbursable basis with a not-to-exceed amount of \$183,700 for construction services.

The maximum amount payable by the CITY to the CONSULTANT under this Agreement shall not exceed said not-to-exceed amount unless a supplemental agreement has been negotiated and executed in writing by the CITY prior to incurring any costs in excess of the not-to-exceed amount.

2. Partial payments may be made upon request of the CONSULTANT to cover the percentage of work completed, but are not to be more frequent than one (1) per month. Each payment request shall be accompanied by a spreadsheet showing a list of all tasks, their original budget amount, cost incurred through the invoice date, estimated remaining costs, and estimated total costs through completion. A short narrative or remark column shall be included. Any problems and potential causes for delay shall be noted. Failure to note any reasons for delay shall constitute a waiver of claims for delay to the date of the payment request. Payments to the CONSULTANT will be made within 30 days of receipt of the payment request.
3. Final payment of any balance due the CONSULTANT of the ultimate gross amount earned will be made promptly upon ascertainment and verification by the CITY of the satisfactory completion of the work under this Agreement and its acceptance by the CITY and the receipt of documents which are to be furnished under this Agreement.
4. Each payment by the CITY shall constitute full payment for labor, materials, supplies, equipment and incidentals to the date of CONSULTANT'S partial payment request. CONSULTANT'S acceptance of payment constitutes a waiver of any claims for payment not included in the partial payment request.
5. Payment for extra work performed under this Agreement shall be paid as agreed to by the parties hereto in writing at the time extra work is authorized.

## **SECTION VI: EMPLOYMENT**

The CONSULTANT warrants that CONSULTANT has not employed or retained any company or person, other than a bona fide employee working solely for the CONSULTANT, to solicit or secure this contract and that he has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the CONSULTANT, any fee, commission, percentage, brokerage fee, gifts or any other consideration, contingent upon or resulting from the award or making of this contract. For breach or violation of this warranty, CITY shall have the right to annul this Agreement without liability, or in its discretion, to deduct from the agreement price or consideration or otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift or contingent fee.

Any and all employees of the CONSULTANT, while engaged in the performance of any work or services required by the CONSULTANT under this Agreement, shall be considered employees of the CONSULTANT only and not of the CITY and any and all claims that may or might arise under the Workman's Compensation Act on behalf of said employees, while so engaged on any of the work or services provided to be rendered herein, shall be the sole obligation and responsibility of the CONSULTANT.

The CONSULTANT shall not engage, on a full or part time basis, or other basis, during the period of the contract, any professional or technical personnel who are, or have been, at any time during the period of the contract, in the employ of the CITY, except regularly retired employees, without written consent of the CITY.

## **SECTION VII: NONDISCRIMINATION**

The CONSULTANT agrees not to discriminate against any client, employee, or applicant for employment or for services because of race, creed, color, national origin, marital status, sex, age, handicap, or sexual orientation except for a bona fide occupational qualification with regard to, but not limited to the following: employment upgrading, demotion or transfer, recruitment or any recruitment advertising, a layoff or terminations, rates of pay or other forms of compensation, selection for training, rendition of services. The CONSULTANT understands and agrees that if it violates this provision, this Agreement may be terminated by the CITY and further that the CONSULTANT shall be barred from performing any services for the CITY now or in the future unless a showing is made satisfactory to the CITY that discriminatory practices have terminated and that recurrence of such action is unlikely.

## **SECTION VIII: CHANGES IN WORK**

The CONSULTANT shall make such revisions in the work included in this Agreement as are necessary to correct errors or omissions appearing therein, when required to do so by the CITY, without additional compensation.

Should the CITY find it desirable for its own purposes to have previously satisfactorily completed work or parts thereof revised, other than minor revisions within the scope of the work, the CONSULTANT shall make such revisions, if requested and as directed by the CITY in writing. This work shall be considered as Extra Work and will be paid for as provided in Section V. All extra work shall be submitted as a supplement to the basic agreement and approved by the CITY Director of Public Works in writing before the work is undertaken. Said supplement may also extend the time for completion as agreed upon by the CITY and the CONSULTANT.

## **SECTION IX: TERMINATION OF AGREEMENT**

1. The CITY reserves the right to terminate this Agreement at any time upon not less than ten (10) days written notice to the CONSULTANT.
2. In the event this Agreement is terminated under any of its terms prior to completion of the work, a final payment shall be made to the CONSULTANT commensurate with the amount of work completed to the date of termination. The CITY is authorized to offset or deduct from any sums due the CONSULTANT any actual charges incurred by the CITY for the default of the CONSULTANT.
3. In the event this Agreement is terminated prior to completion of the work, the original copies of all plans, prints, drawings and field notes prepared by the CONSULTANT prior to termination shall become the property of the CITY.
4. Payment for any part of the work by the CITY shall not constitute a waiver by the CITY of any remedies of any type it may have against the CONSULTANT for any breach of this Agreement by the CONSULTANT, or for failure of the CONSULTANT to perform work required of it by the CITY. Forbearance of any rights under the Agreement will not constitute waiver of the entitlement to exercise those rights with respect to any future act or omission by the CONSULTANT.

## **SECTION X: DISPUTES**

Any dispute concerning questions of facts in connection with work not disposed of by agreement between the CONSULTANT and the CITY shall be referred for determination to the Director of Public Works, whose decision in the matter shall be final and binding on the parties of this Agreement, provided, however, that if an action is brought challenging the Director of Public Works' decision, that decision shall be subject to de novo judicial review.

## **SECTION XI: INDEMNITY**

CONSULTANT agrees to indemnify CITY from any claims, damages, losses, and costs, including, but not limited to, attorney's fees and litigation costs, arising out of claims by third parties for property damage or bodily injury, including death, to the proportionate extent caused by the negligence or willful misconduct of CONSULTANT, CONSULTANT's employees, affiliated corporations, and subconsultants in connection with the project.

CITY agrees to indemnify CONSULTANT from any claims, damages, losses, and costs, including, but not limited to, attorney's fees and litigation costs, arising out of claims by third parties for property damage or bodily injury, including death, to the proportionate extent caused by the negligence or willful misconduct of CITY or its employees in connection with the project.

## **SECTION XII: SUBLETTING OR ASSIGNING OF CONTRACTS**

The CONSULTANT shall not sublet or assign any of the work covered by this Agreement without the written consent of the CITY. The CITY expects that the CONSULTANT will make reasonable attempts to keep the same personnel on this project as designated during the selection process.

## **SECTION XIII: ENDORSEMENT OF PLANS**

The CONSULTANT shall place CONSULTANT'S endorsement on all reports, plans, estimates or any other data furnished by CONSULTANT.

## **SECTION XIV: INTEREST**

If payment of the amounts due, or any portion thereof, is not made as prescribed above, interest on the unpaid balance thereof will occur at the rate of one-half percent (1/2%) per month and become due and payable at the time said overdue payments are made, unless delay in payment is due to improper, contested, or inadequate billing procedures followed by the CONSULTANT. In the event of disputed or contested billing, only that portion so contested shall be withheld, and the undisputed portion shall be paid in accordance with the payment provision outlined herein. The CITY shall exercise reasonableness in contesting any bill or portion thereof. Where usury limits are less than the stated interest rate above, the maximum lawful interest rate shall apply to the unpaid balance.

## **SECTION XV: STANDARD OF CARE**

The standard of care applicable to the CONSULTANT'S services will be the degree of skill and diligence normally employed by professional consultants performing the same or similar services. The CONSULTANT will re-perform any services not meeting this standard without



additional compensation.

## **SECTION XVI: SUBSURFACE INVESTIGATIONS**

In soils, foundation, groundwater, and other subsurface investigations, the actual characteristics may vary significantly between successive test points and sample intervals and at locations other than where observations, explorations, and investigations have been made. Because of the inherent uncertainties in subsurface evaluations, changed or unanticipated underground conditions may occur that could affect total project cost and/or execution. These conditions and cost/execution effects are not the responsibility of the CONSULTANT.

## **SECTION XVII: OPINIONS OF COST, FINANCIAL CONSIDERATIONS, AND SCHEDULES**

In providing opinions of cost, financial analyses, economic feasibility projections, and schedules for the project, the CONSULTANT has no control over cost or price of labor and materials; unknown or latent conditions of existing equipment or structures that may affect operation or maintenance costs; competitive bidding procedures and market conditions; time or quality of performance by third parties; quality, type, management, or direction of operating personnel; and other economic and operational factors that may materially affect the ultimate project cost or schedules. Therefore, the CONSULTANT makes no warranty that the CITY'S actual project costs, financial aspects, economic feasibility or schedules will not vary from the CONSULTANT'S opinions, analyses, projections, or estimates.

## **SECTION XVIII: ACCESS TO CONSULTANT'S ACCOUNTING RECORDS**

The CONSULTANT will maintain accounting records, in accordance with generally accepted accounting principles and practices, to substantiate all invoiced amounts. These records will be available to the CITY during the CONSULTANT'S normal business hours for a period of one year after the CONSULTANT'S final invoice for examination to the extent required to verify the direct costs (excluding established or standard allowances and rates) incurred hereunder. The CITY may only audit accounting records applicable to cost-reimbursable type compensation.

## **SECTION XIX: CONSULTANT'S INSURANCE**

The CONSULTANT shall procure and maintain for the duration of the Agreement, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the CONSULTANT, its agents, representatives, or employees.

CONSULTANT'S maintenance of insurance as required by the Agreement shall not be construed to limit the liability of the CONSULTANT to the coverage provided by such insurance, or otherwise limit the CITY'S recourse to any remedy available at law or in equity.

### **1. Minimum Scope of Insurance**

CONSULTANT shall obtain insurance of the types described below:

- A. Automobile Liability insurance covering all owned non-owned, hired and leased vehicles. Coverage shall be written on Insurance Services Office (ISO) form CA 00 01 or a substitute form providing equivalent liability coverage. If

necessary, the policy shall be endorsed to provide contractual liability coverage.

- B. Commercial General Liability insurance shall be written on ISO occurrence form CG 00 01 and shall cover liability arising from premises, operations, independent contractors and personal injury and advertising injury. The CITY shall be named as an additional insured under the Contractor's Commercial General Liability insurance policy with respect to the work performed for the CITY using an additional insured endorsement at least as broad as ISO CG 20 26.
- C. Worker's Compensation coverage as required by the Industrial Insurance laws of the State of Washington.
- D. Professional Liability insurance appropriate to the CONSULTANT'S profession.

## **2. Minimum Amounts of Insurance**

CONSULTANT shall maintain the following insurance limits:

- A. Automobile Liability insurance with a minimum combined single limit for bodily injury and property damage of \$1,000,000 per accident.
- B. Commercial General Liability insurance shall be written with limits no less than \$1,000,000 each occurrence, \$2,000,000 general aggregate.
- C. Professional Liability insurance shall be written with limits no less than \$1,000,000 per claim and \$1,000,000 policy aggregate limit.

## **3. Other Insurance Provisions**

The CONSULTANT'S Automobile Liability, Professional Liability and Commercial General Liability insurance policies are to contain, or be endorsed to contain that they shall be primary insurance with respect to the CITY. Any insurance, self-insurance, or insurance pool coverage maintained by the CITY shall be in excess of the CONSULTANT'S insurance and shall not contribute with it.

## **4. Acceptability of Insurers**

Insurance is to be placed with insurers with a current A.M. Best rating of not less than A:VII.

## **5. Verification of Coverage**

CONSULTANT shall furnish the City with original certificates and a copy of the amendatory endorsements, including but not necessarily limited to the additional insured endorsement, evidencing the insurance requirements of the CONSULTANT before commencement of the work.

## **6. Notice of Cancellation**

The CONSULTANT shall provide the CITY with written notice of any policy cancellation, within two business days of its receipt of such notice.

## **7. Failure to Maintain Insurance**

Failure on the part of the CONSULTANT to maintain the insurance as required shall constitute a material breach of contract, upon which the CITY may, after giving five business days notice to the CONSULTANT to correct the breach, immediately terminate the contract or, at its discretion, procure or renew such insurance and pay any and all premiums in connection therewith, with any sums so expended to be repaid to

the CITY on demand, or at the sole discretion of the CITY, offset against funds due the CONSULTANT from the CITY.

**8. CITY Full Availability of Consultant Limits**

If the Consultant maintains higher insurance limits than the minimums shown above, the CITY shall be insured for the full available limits of Commercial General and Excess or Umbrella liability maintained by the Consultant, irrespective of whether such limits maintained by the Consultant are greater than those required by this contract or whether any certificate of insurance furnished to the CITY evidences limits of liability lower than those maintained by the Consultant.

**SECTION XX: OWNER-FURNISHED DATA**

CONSULTANT will reasonably rely upon the timeliness, accuracy, and completeness of the information provided by the CITY, subject to Section XV.

**SECTION XXI: LITIGATION ASSISTANCE**

The scope of services does not include costs of the CONSULTANT for required or requested assistance to support, prepare, document, bring, defend, or assist in litigation undertaken or defended by the CITY. All such services required or requested of the CONSULTANT by the CITY, except for suits or claims between the parties to this Agreement, will be reimbursed as mutually agreed, unless and until there is a finding by a court or arbitrator that the CONSULTANT'S negligence caused the CITY'S damage.

**SECTION XXII: REUSE OF PROJECT DOCUMENTS**

All designs, drawings, specifications, documents, and other work products of the CONSULTANT are instruments of service for this project, whether the project is completed or not. Reuse by the CITY or by others acting through or on behalf of the CITY of any such instruments of service based on facts or circumstances not contemplated in the original work, without the written permission of the CONSULTANT, will be at the CITY'S sole risk. The CITY agrees to indemnify and defend the CONSULTANT from all claims, damages, losses, and expenses, including, but not limited to, direct, indirect, or consequential damages and attorney's fees, arising out of or related to such unauthorized reuse.

**SECTION XXIII: FORCE MAJEURE**

The CONSULTANT is not responsible for damages or delay in performance caused by acts of God, strikes, lockouts, accidents, or other events beyond the control of the CONSULTANT.

**SECTION XXIV: SUSPENSION, DELAY, OR INTERRUPTION OF WORK**

The CITY may suspend, delay, or interrupt the services of the CONSULTANT for the convenience of the CITY. In the event of force majeure or such suspension, delay, or interruption, an equitable adjustment in the project's schedule, commitment and cost of the CONSULTANT'S personnel and subconsultants, and the CONSULTANT'S compensation may be made if warranted.

**SECTION XXV: NO THIRD PARTY BENEFICIARIES**

This Agreement gives no rights or benefits to anyone other than the CITY and the CONSULTANT and has no third-party beneficiaries.

**SECTION XXVI: JURISDICTION, VENUE AND APPLICABLE LAW**

The law of the state of Washington shall govern the validity of this Agreement, its interpretation and performance, and any other claims related to it. The CONSULTANT consents to personal jurisdiction and venue shall be in the courts of Whitman County, Washington.

**SECTION XXVII: COMPLETE AGREEMENT**


This document and referenced attachments contain all covenants, stipulations and provisions agreed upon by the parties. No agent, or representative of either party has authority to make, and the parties shall not be bound by or be liable for, any statement, representation, promise or agreement not set forth herein. No changes, amendments, or modifications of the terms hereof shall be valid unless reduced to writing and signed by the parties as an amendment to this Agreement.

**SECTION XXVIII: SEVERABILITY AND SURVIVAL**

If any of the provisions contained in this Agreement are held for any reason to be invalid, illegal, or unenforceable, the enforceability of the remaining provisions shall not be impaired thereby. Limitations of liability, indemnities, and other express representations shall survive termination of this Agreement for any cause.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

CONSULTANT:  
J-U-B Engineers, Inc.

By: 

Title: AREA MANAGER

Date: 6/29/16

CITY:  
City of Pullman, a municipal corporation  
of the State of Washington

By: \_\_\_\_\_  
Mayor

Date: \_\_\_\_\_

ATTEST:

By: \_\_\_\_\_  
City Clerk

## Exhibit A

The scope of services to be provided by CONSULTANT, budget, and billing rates for the WWTP UV Disinfection and Miscellaneous Improvements project are as detailed in the attached documents.

## **Additional Services No. 1 –Construction Phased Services**

### **WWTP Upgrades**

#### **UV Disinfection and Miscellaneous Improvements**

##### **BACKGROUND:**

The City of Pullman has bid and awarded the WWTP UV Disinfection and Miscellaneous Improvements Project (March 2018) for construction. Pullman will be completing construction management services for the project, but has requested assistance from the design team with the items listed below in Task 300 – Construction Phase Services.

##### **TASK 300 – CONSTRUCTION PHASE SERVICES**

1. *General Administration of the Contract Documents.* Consult with, advise, and assist CLIENT in J-U-B's role as CLIENT's representative. Relevant J-U-B communications with contractor shall be imputed to the CLIENT. Nothing contained in this Additional Services No. 1 creates a duty in contract, tort, or otherwise to any third party; but, instead, the duties defined herein are performed solely for the benefit of the CLIENT.
2. *Pre-Construction Conference.* Participate in a pre-construction conference.
3. *Periodic Site Visits by J-U-B.* Make visits to the Site at intervals appropriate to the various stages of construction, as Pullman and J-U-B deem necessary, to observe as an experienced and qualified design professional the progress and quality of the Work. Such visits and observations, if any, are not intended to be exhaustive or to extend to every aspect of the Work or to involve detailed inspections of the Work beyond the responsibilities specifically assigned to J-U-B in this Agreement, but rather are to be limited to spot checking, selective sampling, and similar methods of general observation of the Work based on J-U-B's exercise of professional judgment. Based on information obtained during such visits and observations, J-U-B will determine in general, for the benefit of CLIENT, if the Work is proceeding in accordance with the Contract Documents, and J-U-B shall keep CLIENT informed of the progress of the Work.
4. *Defective Work.* Recommend to CLIENT that the Work be disapproved and rejected while it is in progress if J-U-B believes that such Work does not conform generally to the Contract Documents or that the Work will prejudice the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract Documents.
5. *Clarifications and Interpretations; Field Orders.* Recommend to CLIENT necessary clarifications and interpretations of the Contract Documents as appropriate to the orderly

completion of the Work. Such clarifications and interpretations will be consistent with the intent of and reasonably inferable from the Contract Documents. Based on J-U-B's recommendations, CLIENT may issue Field Orders authorizing minor variations from the requirements of the Contract Documents.

6. *Change Orders, and Work Change Directives.* CLIENT may issue Change Orders or Work Change Directives authorizing variations from the requirements of the Contract Documents. The City will lead this but may need to consult with J-U-B on technical aspects.
7. *Shop Drawings and Samples.* Review or take other appropriate action in respect to Shop Drawings, Samples, and other data that contractor is required to submit, but only for conformance with the design concept of the Project and compliance with the information given in the Contract Documents. Such reviews or other action shall not extend to means, methods, techniques, sequences, or procedures of construction or to safety precautions and programs incident thereto.
8. *Substitutes.* Consult with and advise CLIENT concerning, and determine the acceptability of, substitute materials and equipment proposed by contractor.
9. *Contractor's Completion Documents.* Receive and review maintenance and operating instructions, schedules, guarantees, bonds and certificates of inspection, tests and approvals, Shop Drawings, Samples, other data approved, and the annotated record documents which are to be assembled by contractor in accordance with the Contract Documents (such review will only be to determine generally that their content complies with the requirements of, and in the case of certificates of inspection, tests, or approvals indicates compliance with, such Contract Documents); transmit them to CLIENT with written comments.
10. *Final Notice of Acceptability of the Work.* Assist CLIENT in conducting a final inspection to determine if the completed Work is acceptable so that J-U-B may recommend, in writing, that final payment be made to contractor.

*General Limitation of Responsibilities.* J-U-B shall not be responsible for the acts or omissions of any contractor or of any of their subcontractors, suppliers, or any other individual or entity performing or furnishing any of the Work. J-U-B shall not be responsible for failure of any contractor to perform or furnish the Work in accordance with the Contract Documents.

J-U-B's Construction Phase Services will be considered complete on the date of Final Notice of Acceptability of the Work.

#### **TASK 400 – POST-CONSTRUCTION PHASE**

After receiving authorization from CLIENT to proceed with the post-construction phase, J-U-B may:

1. *Testing/Adjusting Systems.* Provide assistance in connection with the testing and adjusting of equipment or systems.
2. *Operate/Maintain Systems.* Assist CLIENT in coordinating training for CLIENT's staff to operate and maintain equipment and systems.
3. *Control Procedures.* Assist CLIENT in developing procedures for control of the operation and maintenance of, and recordkeeping for, equipment and systems.
4. *O&M Manual.* Assist CLIENT in preparing operating, maintenance, and staffing manuals.
5. *Defective Work.* Together with CLIENT, visit the Project to observe any apparent defects in the Work, assist CLIENT in consultations and discussions with contractor concerning correction of any such defects, and make recommendations as to replacement or correction of Defective Work, if present.

The Post-Construction Phase Services may commence during the construction phase and, if not otherwise modified by the mutual agreement of CLIENT and J-U-B, will terminate at the end of the correction period.



ATTACHMENT A

City of Pullman WA; UV Disinfection and Miscellaneous Improvements																			
Attachment 1 - Basis of Fees (labor estimate, hours)																			
Task		Principal	Project Manager	Project Engineer	Sanitary Engineer	Senior Engineer / QC	Structural Engineer	Professional Land Surveyor	Survey Crew	Survey Tech	CAD Design	Clerical	Expenses	Esvelt	AEI (Electrical)	Mechanical	Misc. Subconsultant	Geotechnical	
Number / Sub-Task	Task																		Item Subtotal Subtask Total
300	Construction Phase Services (T&M)																		
1	General Administration of the Contract Documents	2	20		10							10		\$ 5,000	\$ 2,500		\$ 1,000		\$15,700 \$140,900
2	Pre-Construction Conference				8										\$ 1,100				\$2,500
3	Periodic Site Visits by J-U-B, AEI, AW		10		100	12	12								\$ 8,000		\$ 1,000		\$32,700
4	Defective Work		4		10		4								\$ 2,000				\$5,300
5	Clarifications and Interpretations; Field Orders		2		30	4	4					4			\$ 3,000				\$10,400
6	Change Orders, and Work Change Directives	4	4		60	8	16					8			\$ 4,000				\$21,000
7	Shop Drawings and Samples		4		100		70					16			\$ 5,300		\$ 4,000		\$40,700
8	Substitutes		2		8	2	4					4			\$ 2,000		\$ 1,000		\$6,200
9	Contractor's Completion Documents		2		8										\$ 1,500				\$3,300
10	Final Notice of Acceptability of the Work		2		8							2			\$ 1,100				\$3,100
400	Post-Construction Phase Services (T&M)																		
1	Testing/Adjusting Systems		8		24							4			\$ 3,000				\$9,200 \$42,800
2	Operate/Maintain Systems				12							4			\$ 2,750				\$5,200
3	Control Procedures		2		20							12							\$4,800
4	O&M Manual		2		80	8						40			\$ 2,268				\$21,100
5	Defective Work		2		8		2					4							\$2,500

**FEE SCHEDULE**  
**J-U-B ENGINEERS, INC. –Coeur d’Alene & Moscow**  
**July 9, 2018**  
 (Subject to change Jan. 2019)

**LABOR BY TYPE**

**RATE/HR. RANGE**

PRINCIPAL	\$175.00	to	\$250.00
PROJECT MANAGER	\$150.00	to	\$210.00
SANITARY ENGINEER	\$140.00	to	\$185.00
SENIOR ENGINEER, Q.C.	\$140.00	to	\$185.00
PROJECT ENGINEER / P.E.	\$110.00	to	\$170.00
DESIGN ENGINEER / E.I.	\$80.00	to	\$100.00
STRUCTURAL ENGINEER	\$135.00	to	\$180.00
PLANNER	\$135.00	to	\$150.00
LAND SURVEYOR, PLS	\$105.00	to	\$155.00
2-MAN SURVEY CREW	\$160.00	to	\$200.00
1-MAN SURVEY CREW	\$95.00	to	\$105.00
SURVEY TECHNICIAN	\$75.00	to	\$100.00
CONSTRUCTION OBSERVER	\$75.00	to	\$110.00
ENGINEERING TECHNICIAN	\$75.00	to	\$100.00
DRAFTER-CAD	\$75.00	to	\$95.00
CLERICAL / ADMINISTRATIVE	\$50.00	to	\$85.00

**MATERIALS & OUT-OF-POCKET EXPENSES**

SUB-CONSULTANTS	COST PLUS 10%
MATERIALS	COST PLUS 10%
LODGING	COST PLUS 10%
CREDIT/PAYMENT/DEBIT CARD PROCESSING	COST PLUS 10%
DAILY PER DIEM	\$41.00
VEHICLE COST PER MILE (adjusted if fuel increases)	\$0.545
ROBOTIC SURVEY INSTRUMENT	\$18.31/HR.
GPS EQUIPMENT	\$18.31/HR.

15. A RESOLUTION AUTHORIZING A LEASE AGREEMENT

STAFF REPORT

QUESTIONS FROM COUNCIL ON STAFF REPORT

RESOLUTION NO. R-59-18

A RESOLUTION AUTHORIZING THE EXECUTION OF A LEASE AGREEMENT BETWEEN  
THE CITY OF PULLMAN AND LUMBERYARD PARTNERS, LLC.

DISCUSSION

ACTION TAKEN

NOTES:

# REQUEST FOR COUNCIL ACTION

For Meeting of: 07/17/2018

## ACTION REQUESTED:

Authorize lease agreement with Lumberyard Partners, LLC for rental of city-owned property associated with City of Pullman's Well No. 1.

## BACKGROUND:

See Staff Report No. 058.

## RECOMMENDATION:

Adopt the attached resolution authorizing a lease agreement with Lumberyard Partners, LLC., for city-owned property associated with City of Pullman's Well No. 1.

## FISCAL IMPACT:

\_\_\_\_\_  
BARS Code Number

## SUBMITTED BY:

Name Kevin Gardes  
Title Public Works Director  
Dept. Public Works

## ATTACHMENTS FOR COUNCIL REVIEW/ACTION:

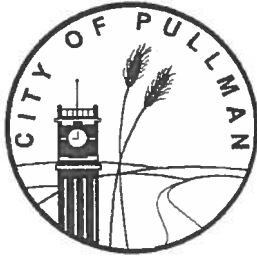
1. Staff Report No. 058
2. Resolution No. R-59-18

## REVIEWED BY:

Department Head  
City Supervisor  
City Attorney  
(As to Form)

Initial	Date
<u>KG</u>	<u>7-11-18</u>
<u>ARL</u>	<u>7-12-18</u>
<u>may</u>	<u>7-12-2018</u>

S.R. #058



# CITY OF PULLMAN

## Public Works and Planning Departments

325 S.E. Paradise Street, Pullman, WA 99163  
(509) 338-3220 or (509) 338-3213 Fax (509) 338-3282  
[www.pullman-wa.gov](http://www.pullman-wa.gov)

### Staff Report No. 058

**TO:** Mayor and City Council

**FROM:** Kevin Gardes, Public Works Director *KA*

**RE:** Lease Agreement with Lumberyard Partners, LLC (Well No.1)

**DATE:** For July 17, 2018, City Council Meeting

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The former Pullman Building Supply property on N. Grand Avenue is currently being remodeled by Greg Petry into a Food Truck Hall. Two city wells are located in close proximity to the Quonset hut building that will house the food trucks. Both of these wells (City Wells No. 1 and 3) are no longer in use. The casing for Well No. 1 has been filled with grout, and the building is currently used for miscellaneous storage. Well No. 3 is used by the Palouse Basin Aquifer Committee (PBAC) for continuous groundwater level monitoring. Mr. Petry has requested that the City lease the Well No. 1 structure/site to him as an amenity for his food truck project. Patrons of his business could use the wellhouse for outdoor, covered seating, with a view of the South Fork of the Palouse River.

Well House No. 1 is the original drilled well for the City of Pullman, constructed in 1913. Some time later, an addition was added on the north side of the existing wellhouse. The addition has settled, resulting in separation from the original building. Mr. Petry is proposing to demolish the addition that has settled, which does not have the historical significance of the original structure. Other work that Mr. Petry is proposing to complete at his cost: replacement of missing bricks and tuckpointing; fixing broken windows; any necessary roof repairs; repair or add lighting in and around premises; painting (encapsulate existing lead paint on interior); landscaping; installation of handrail in curved archway. Work on the wellhouse would be prevailing wage. In exchange for the above described work, which Mr. Petry estimates would cost in the neighborhood of \$20,000, he has asked for a nominal lease rate (\$10/month), with an initial ten year period, that is renewable for up to two (2) additional ten (10) year periods.

The City's Historic Preservation Commission (HPC) reviewed the project proposal at its April 10, 2017 meeting and made four recommendations, which have been satisfactorily addressed in the lease or previous survey of the structure. This proposal was discussed at Council's regular meeting of May 29, 2018. A lease agreement has been prepared by the City Attorney. Included in the lease is a list of improvements to be completed by the Lessee, with review and approval steps by City staff prior to work being performed. This lease agreement presents a beneficial public-private partnership opportunity to preserve a historically significant Pullman structure.

RESOLUTION NO. R-59-18

A RESOLUTION AUTHORIZING THE EXECUTION OF A LEASE AGREEMENT BETWEEN THE CITY OF PULLMAN AND LUMBERYARD PARTNERS, LLC.

WHEREAS, the City Council for the city of Pullman has before it a Lease Agreement which is attached hereto and marked as Exhibit "A"; and,

WHEREAS, this Council believes it to be in the best interests of the city of Pullman to authorize the execution of said Lease Agreement; now, therefore,

IT IS HEREBY RESOLVED that the Mayor and the city clerk be and they are hereby authorized and directed to execute the Lease Agreement attached hereto and marked as Exhibit "A" and to deliver an executed original thereof to Lumberyard Partners, LLC.

IT IS FURTHER RESOLVED that the Mayor and city clerk are each hereby authorized and directed to take such further action as may be appropriate in order to effect the purpose of this Resolution and the Lease Agreement authorized thereby.

ADOPTED by the City Council of the city of Pullman at a regular meeting held on the \_\_\_\_\_ day of \_\_\_\_\_, 2018.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2018.

\_\_\_\_\_  
Mayor Glenn A. Johnson

ATTEST:

\_\_\_\_\_  
City Clerk Dee Stiles-Elliott

Approved as to Form:

\_\_\_\_\_  
City Attorney Laura D. McAloon

LEASE AGREEMENT  
BETWEEN  
THE CITY OF PULLMAN, WASHINGTON  
AND  
LUMBERYARD PARTNERS, LLC



## TABLE OF CONTENTS

1. TERM .....	1
2. PREMISES .....	1
3. USE OF PREMISES.....	1
4. RENTS & FEES .....	2
5. FAILURE TO PAY RENT .....	2
6. INTERPRETATION .....	3
7. DAMAGE OR DESTRUCTION.....	3
8. INDEMNITY AND WAIVER OF DAMAGES .....	3
9. INSURANCE.....	4
10. HAZARDOUS MATERIALS .....	4
11. HAZARDOUS SUBSTANCES STORAGE.....	5
12. COMPLIANCE WITH LAWS, RULES AND REGULATIONS .....	6
13. WAIVER OF SUBROGATION.....	6
14. IMPROVEMENTS .....	6
15. STORAGE.....	7
16. UTILITIES AND MAINTENANCE.....	7
17. TAXES.....	8
18. DEFAULT .....	8
19. LESSOR'S RIGHT TO ENTER PREMISES .....	9
20. ADDITIONAL RIGHTS AND OBLIGATIONS OF LESSEE .....	9
21. LESSOR'S RIGHT OF CANCELLATION.....	9
22. LESSEE'S RIGHT OF CANCELLATION .....	10
23. LEGAL CLAIMS AND ATTORNEY FEES.....	10
24. APPROVAL OR DIRECTION BY LESSOR.....	11
25. LIENS OR ENCUMBRANCES.....	11
26. ASSIGNMENT AND SUBLETTING .....	11
27. RIGHT OF FIRST REFUSAL .....	11
28. SEVERABILITY .....	12
29. PRIOR AND COLLATERAL AGREEMENTS.....	12
30. SUBMISSION OF AGREEMENT .....	12
31. RELATIONSHIP OF LESSOR AND LESSEE.....	12
32. NOTICES.....	12
33. TIME OF ESSENCE .....	13
34. SURRENDER OF POSSESSION .....	13
35. NON-WAIVER OF BREACH .....	13
36. SURVIVAL OF INDEMNITIES .....	13
37. APPLICABLE LAW; VENUE; WAIVER OF TRIAL BY JURY .....	13
38. PARAGRAPH HEADINGS.....	14
39. EXHIBITS .....	14

## LEASE AGREEMENT

THIS LEASE AGREEMENT, ("Agreement") is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2018, by and between the CITY OF PULLMAN, a municipal corporation and code city of the State of Washington ("Lessor") and LUMBERYARD PARTNERS, LLC, a Washington limited liability company ("Lessee"). Lessor and Lessee are collectively referred to herein as the "parties."

### WITNESSETH:

WHEREAS, Lessor is granted authority to lease real property under RCW 35A.11.020 on the terms and conditions it deems to be in the best public interest; and

WHEREAS, Lessor and Lessee desire to enter into this Agreement.

NOW, THEREFORE, in consideration of the terms, conditions, covenants and performances contained herein, IT IS MUTUALLY AGREED AS FOLLOWS:

#### 1. TERM

The initial term of this Agreement shall be for a period of ten (10) years, beginning \_\_\_\_\_, 2018, and shall automatically renew thereafter for up to two (2) additional ten (10) year terms unless terminated as hereinafter provided.

#### 2. PREMISES

Lessor hereby leases to Lessee the building and land, all as shown on Exhibit A, and described fully in Exhibit B attached hereto and made a part hereof, located at 305 N. Grand, Pullman, WA 99163, all of which is hereinafter referred to as "Premises."

#### 3. USE OF PREMISES

A. Lessee warrants that it shall use the Premises to operate a commercial restaurant and bar and for no other purpose without the written consent of Lessor (the "Permitted Uses").

B. Lessee shall occupy the Premises during the term of this Agreement.

C. Lessee, its agents, employees, patrons and suppliers, and other persons doing business with Lessee, shall have the right of ingress and egress to and from the Premises and the public use areas/facilities used in connection therewith, over designated Lessor property and roadways, subject to rules and regulations governing the use of Lessor and as same may be promulgated by Lessor from time to time. No commercial activities shall be conducted on the Premises except those authorized in Section A of this Article 3.

D. Lessor covenants and agrees that it is in lawful possession of the Premises demised herein, and has good and lawful authority to execute this Agreement.

E. Lessor and Lessee agree that they will not disturb each other, provided, Lessor consents to any and all construction work, noises, disturbances, or related impacts arising from Lessee's construction of the Improvements as described in Article 14 herein. Such consent shall not relieve Lessee of the obligation to comply with all applicable laws and regulations related to the Improvements.

F. Lessor covenants that upon paying the rent when applicable and performing the covenants and conditions herein contained, Lessee shall peacefully and quietly have, hold and enjoy the Premises for the term of this Agreement.

#### 4. RENTS & FEES

In addition to the benefits to Lessor arising from the value of the Improvements, Lessee shall pay to Lessor the amount of \$10.00 per month to rent the Premises during the term of this Agreement. Such rent is due and owing by the first (1<sup>st</sup>) day of the month and no later than the tenth (10<sup>th</sup>) day of each month.

A. All cable, telephone, water, sewer, garbage, natural gas and electrical services to the Premises shall be paid for by Lessee. Lessee shall maintain the all utilities in good working order. As further set forth in Article 17, Lessee shall also pay all taxes on the Premises.

B. Lessee's payments to Lessor shall be free from all claims, demands or set-offs, of any nature, by any person or corporation or entity. Payments shall be the absolute and sole property of Lessor.

#### 5. FAILURE TO PAY RENT

A. No demand for rent need at any time be given, but it shall be the duty of Lessee to pay all monies when due. In the event Lessee fails to pay rent, fees, charges or billings as required under the provisions of this Agreement after the payments become due as described in Article 4 – RENT & FEES, interest at the maximum legal rate, or 12% per annum, whichever amount is greater, shall be assessed until fully paid. The implementation of this provision shall not preclude Lessor from terminating this Agreement for default in the payment of rent, fees or charges, or from enforcing any other provisions contained herein.

B. Failure to pay amounts due or comply with other of Lessee's financial obligations to Lessor under this Agreement shall also entitle Lessor to re-enter and take possession of the Premises upon giving Lessee thirty (30) days advance written notice of its intent to do so, if said monetary default has not been remedied within said thirty (30) day period. However, Lessor may extend the time period to correct the default if, in its opinion, due diligence is shown by Lessee in curing the default.

6. INTERPRETATION

In the event a conflict arises in the interpretation of the covenants and restrictions provided herein, the parties agree they have mutually agreed to the language of this Agreement and the plain language meaning of its terms shall prevail.

7. DAMAGE OR DESTRUCTION

A. Leased Premises

1. If the Premises, excluding the Improvements or trade fixtures, are partially damaged by fire or other casualty, but not rendered untenable, the same shall be repaired with due diligence by Lessee if Lessor so requests in writing. The Premises shall be repaired or restored at Lessee's expense to essentially the same condition as that which existed prior to such damage. In the event Lessor requires repairs, and such damage is caused by the negligence of Lessee, its officials, agents or employees, it shall be the responsibility of Lessee to pay that portion of the loss, damage and costs attributable to Lessee's negligence.

2. If the Premises, excluding the Improvements or trade fixtures, are completely destroyed by fire or other casualty or so damaged as to remain untenable for more than sixty (60) days, Lessor shall be under no obligation to repair or reconstruct such Premises. Lessor shall notify Lessee within sixty (60) days of the occurrence of such casualty whether it intends to repair or reconstruct the damaged Premises. If Lessor elects to repair or reconstruct, it shall do so with due diligence and at its expense, unless such damage was caused by the negligence of Lessee, its officials, employees, or agents, in which case it shall be the responsibility of Lessee to pay that portion of the loss, damage and costs attributable to Lessee's negligence that is not covered by Lessee's insurance proceeds. Should Lessor elect not to repair or reconstruct the Premises, this Agreement as to the destroyed or damaged Premises, shall terminate on the date of notification by Lessor as specified in this Section.

3. Lessee may terminate this Agreement if the repair period exceeds one hundred and eighty (180) days after the commencement of the repairs or if the Premises is completely destroyed by a casualty event during the last twelve (12) months of the term or any renewal period and the anticipated period for repairing the casualty or damage exceeds sixty (60) days after the date of the notice from Lessor to Lessee.

8. INDEMNITY AND WAIVER OF DAMAGES

Lessee shall indemnify and hold harmless Lessor and its elected and appointed officials, agents, employees and representatives from and against any and all claims and actions, demands, damages, civil penalties, charges, judgments, losses, liabilities of any character or kind and other legal actions and proceedings of whatever nature, including reasonable attorney's fees (including fees to establish the right to indemnification) resulting from, arising out of, related to, or caused by Lessee's conduct of business or from any activity or other things done, permitted, or suffered by Lessee in, or about the Premises during the term of this Agreement, excluding only claims or actions or portions thereof arising out of the negligence of Lessor or its elected and appointed

officials, agents and employees, provided that Lessor shall give Lessee prompt and reasonable notice of any such claim or actions made or filed against it.

## 9. INSURANCE

A. Lessee shall, at its expense, maintain insurance in full force and effect during the term of this Agreement in such amounts as to meet the minimum limits of liability as specified below, and insurance shall be placed with companies or underwriters authorized to issue said insurance in the State of Washington and carry a Best's rating no lower than A-. Failure to obtain and maintain such insurance shall constitute a default under this Agreement. The insurance policy(ies) shall be standard comprehensive insurance coverage and Business Interruption to cover all operations of Lessee. The policy(ies) shall include, but not by way of limitation, bodily injury; property damage; automobile, including owned, non-owned, leased and hired; and contractual coverage, including the obligations pursuant to Article 8- INDEMNITY AND WAIVER OF DAMAGES, herein. Lessee shall also insure all personal property and tenant improvements. Lessor shall be named as additional insured with respect to Lessee's use of the Premises which are the subject of this Agreement. Lessee's insurance shall be primary with any insurance maintained by the additional insureds being non-contributory and shall be stated on the Certificate of Insurance provided by Lessee. Lessee is responsible for paying all deductibles or self-insured retentions. Lessee shall promptly upon execution of this Agreement, furnish to Lessor the appropriate certificates of insurance and additional insured endorsements evidencing coverage affected and to be maintained for the term of this Agreement. The coverage shall not be less than One Million Dollars (\$1,000,000.00), combined single limit with an annual aggregate coverage of Two Million Dollars (\$2,000,000.00). Lessee's insurance policies shall be endorsed so that the insurance carrier will provide Lessor with at least thirty (30) days notification prior to cancellation or material change. Such notice of cancellation or material change shall be mailed to Lessor by certified mail. Where any policy(ies) has (have) normal expirations during the term of this Agreement, written evidence or renewal shall be furnished to Lessor at least thirty (30) days prior to such expiration. Upon written request by Lessor, Lessee shall permit Lessor to inspect the originals of all applicable policies. Lessee's insurance identified in this Article 9 shall include a waiver of subrogation in favor of the additional insured. This Article 9 shall be subject to periodic adjustments by Lessor. Notwithstanding the foregoing, Lessee shall only be required to carry a builder's risk insurance policy during construction and will convert to standard liability insurance as listed above prior to opening for business.

B. Lessor shall, at its expense, maintain insurance against loss of damage to the Premises by fire and any of the risks covered by broad form or extended coverage in such amounts necessary to replace the buildings and all other fixed improvements installed by Lessor that are a part of the Premises.

## 10. HAZARDOUS MATERIALS

A. Lessee agrees to indemnify, defend and hold harmless Lessor from any and all claims or damages from, or in connection with, the presence of Hazardous Substances in or on the Premises that are a result of Lessee's use or occupancy of the Premises, unless the Hazardous Substances are present as a result of the negligence, willful misconduct, or other acts of Lessor, its

agents, employees, contractors or invitees. Without limitation of the foregoing this indemnification shall include any and all costs incurred due to any investigation of the site or any cleanup, removal, or restoration mandated by a federal, state, or local agency or political subdivision.

B. For the purposes of this Agreement, the term "Hazardous Substances" shall be interpreted broadly to include but not be limited to substances designated as hazardous under the Resource Conservation and Recovery Act, 42 U.S.C. 6901, et seq., the Federal Water Pollution Control Act, 33 U.S.C. 1251, et seq., or the Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C. 9601, et seq. or as may be amended, the Model Toxics Control Act (M.T.C.A.), R.C.W. 70.105D, et seq., and any applicable federal, state, or local law or regulation.

#### 11. HAZARDOUS SUBSTANCES STORAGE

A. Lessee is solely responsible for taking all steps and actions to remove or remediate any Hazardous Substances or any other environmental contamination on or under the Premises discovered during Lessee's use or occupancy of the Premises. Lessee is responsible for the protection of public health and safety and the environment from actual or potential harm and is obligated to ensure that the Premises are in compliance with all environmental laws. If any remediation work is required, Lessee, at its sole expense, shall perform all work required and provide to Lessor for approval, a written plan of action for completing said remediation work.

B. Lessee shall not engage in or allow the generation, use, manufacture, treatment, transportation, or storage of any Hazardous Substance in, on, under, or adjacent to the Premises or as otherwise authorized by written permission of Lessor.

C. Lessee shall not engage in or allow the unlawful release of any Hazardous Substance in, on, under or adjacent to Lessee's Premises (including air, surface water and ground water on, in, under or adjacent to the property). Lessee shall at all times be in compliance with environmental laws (and shall cause its employees, agents and contractors to be) with respect to the Premises or any Hazardous Substance and shall handle all Hazardous Substances in compliance with good industry standards and management practices.

D. Lessee shall promptly notify Lessor and any and all adjacent property tenants, in writing, if Lessee has or acquires notice or knowledge that any Hazardous Substance has been or is threatened to be released, discharged or disposed of, on, in, under or from the Premises. Lessee shall immediately take such action as is necessary to report to governmental agencies as required by environmental laws and to detain the spread of and remove, to the satisfaction of any governmental agency having jurisdiction, any Hazardous Substances released, discharged or disposed of as the result of or in any way connected with the conduct of Lessee's business, and which is now or is hereafter determined to be unlawful or subject to governmentally imposed remedial requirements.

12. COMPLIANCE WITH LAWS, RULES AND REGULATIONS

Lessee covenants and agrees that it will comply with all Federal, State and local laws, ordinances, and regulations, and further covenants and agrees it will abide by all applicable rules and regulations that are now in effect or hereinafter adopted by Lessor or which are now or may from time to time be promulgated by Federal, State or local government or agency to the extent such laws, ordinances, and regulations do not conflict with the terms of this Agreement. Lessee shall, at its own expense, obtain and keep in effect all certificates, licenses and permits necessary to conduct its services and pay all fees and taxes applicable to said services.

13. WAIVER OF SUBROGATION

Lessor and Lessee each waive any rights one may have against the other on account of any loss or damage occasioned to Lessor or Lessee, as the case may be, their respective property, the Premises or its contents or to other portions of Lessor arising from any liability, loss, damage or injury caused by fire or other casualty for which property insurance is carried or required to be carried pursuant to this Agreement. Each of the parties hereto, on behalf of their respective insurance companies insuring the property of either Lessor or Lessee against any such loss, to the extent of any recovery under such insurance, waives any right of subrogation that it may have against the other. Each waiver shall be expressly included in, and shall comply with the requirements of, the respective insurance policies. Should either or both of the respective insurance companies assess a charge for such waiver, each party shall pay only for the charges assessed by its respective insurer.

14. IMPROVEMENTS

A. Lessee accepts the Premises "as is." Lessor agrees to allow Lessee to make certain initial improvements (the "Improvements") to the Premises as follows:

1. Demolition and proper disposal of a portion of the building currently in disrepair. The portion to be removed is a newer addition to the original wellhouse. The wellhouse shall be protected and preserved during the demolition work;
2. Any necessary roof repairs to make building interior watertight;
3. Replacement of missing bricks and repointing. New mortar and bricks shall match existing color to the extent practicable;
4. Removal of all debris;
5. Landscaping of yard;
6. Installation of hand rail in curved archway; and
7. Replacement of broken windows to the extent possible to match the existing window panes;.
8. Repair or add lighting in and around Premises;
9. Encapsulation of existing lead paint per EPA approved method.

The Lessee agrees to provide a written plan showing sufficient detail for review and approval by Lessor prior to commencing work on items 1, 2, 3, 6, 7, 8 and 9 above. Lessee shall be solely responsible for obtaining, and paying the associated cost of, any required permits necessary to complete the work, including but not limited to, a Shoreline Substantial Development Permit and Building Permit(s).

The parties agree that the value of the Improvements is approximately \$20,000, and such value is part of the consideration paid by Lessee for the use of the Premises.

B. Lessee understands and agrees that work performed to complete the Improvements shall be paid at the rate of hourly wage, usual benefits, and overtime paid in the Pullman area as established by the Industrial Statistician at the Washington State Department of Labor and Industries.

C. The Premises shall be provided in clean condition, Lessee otherwise accepts the Premises in "as-is" condition. Lessor will allow Lessee to access the Premises to perform the Improvements. Lessor shall remove all personal property from the Premises.

D. Lessor will be responsible for any structural long-term repairs and/or replacing the roof as needed during the term of this Agreement.

#### 15. STORAGE

Inside storage of material is required. Outside storage is not permitted unless agreed to in writing by the parties.

#### 16. UTILITIES AND MAINTENANCE

A. Lessee shall be responsible for the maintenance of the exterior and interior windows, storefronts, atrium, doors, locksets, jambs, casing, card entry, closers, electrical strikes and glazing, interior maintenance including floor coverings, base molding, walls, wall coverings, painting, ceiling tiles, lighting, cabinets, mirrors, countertops, interior plumbing system, bathroom exhaust fans and partitions, heating, ventilation and air conditioning roof top units installed by Lessee, filters, ducting, and air distribution installed by Lessee, all heating, existing ventilation and air conditioning ducting, electrical system, including switch gear, metering, lighting, emergency exit lighting, telephone and fiber service, emergency power, fire alarm system and fire extinguishers, janitorial including exterior and interior window washing, refuse disposal, pest control and signage.

B. Lessee shall be responsible for all snow removal and deicing on the Premises.

C. Any other improvements to the Premises, including the Improvements authorized herein, shall be at Lessee's sole cost, subject to Lessor approval. No alterations of, changes in, or additions to the Premises shall be made without prior written consent of Lessor. Lessee shall submit requests for improvements, alterations, or additions by written submittal to Lessor for approval. All renovations and alterations shall conform in all respects to the applicable statutes,



ordinances, building codes, rules and regulations of all applicable governmental agencies as may have jurisdiction. All of said renovation work shall become the property of Lessor upon termination of this Agreement unless an express written agreement to the contrary has been executed between the parties hereto.

D. Lessee will provide, in a timely manner, for the adequate sanitary handling and removal of all trash, garbage and other refuse caused as a result of Lessee's operations. Lessee shall be responsible for removing trash, garbage and other refuse around the Premises at all times.

E. Lessee shall be responsible for all fees or charges associated with consumption or usage of the following utilities solely servicing the Premises, which are necessary to operate and maintain the area:

1. Electricity & Natural Gas (separately metered);
2. Water & Sewer;
3. Janitorial Service (including janitorial supplies);
4. Telephone and/or telecommunications (in addition to all telecommunication facilities, wiring, installation, setup, and service costs associated with providing Lessee's telecommunication services);
5. Refuse collection and disposal; and
6. Pest Control.

F. Neither party shall be liable to the other, or any other person, for any interruption or failure of the supply of any utility service to the Premises. In the event of interruption of utility services to the Premises, Lessee and Lessor shall take immediate action to restore such utility services as rapidly as possible to avoid unnecessary interruption of Lessee's business operations.

#### 17. TAXES

Lessee agrees to pay all lawful taxes and assessments during the term hereof or any extension as provided for herein, which may be levied or charged by the State, County, City, Federal or other tax-levying body upon the Premises herein or upon any taxable interest acquired by Lessee in this Agreement, including leasehold excise tax or any taxable possessory right which Lessee may have in or to the Premises or facilities hereby leased or the improvements thereon, by reason of its occupancy thereof, or otherwise, as well as all taxes on taxable property, real or personal, owned by Lessee in or about the Premises.

#### 18. DEFAULT

If Lessee should, after notice, fail to remedy any default (A) in the payment of any sum due under this Agreement for thirty (30) days, or (B) in the keeping of any other term, covenant or condition herein with all reasonable dispatch, not exceeding sixty (60) days, then at its option, in addition to and not exclusive of any other remedy, Lessor may by operation of law, without any

further demand or notice, enter the Premises and evict all persons therefrom, using all necessary force to do so, and declare this Agreement at an end.

19. LESSOR'S RIGHT TO ENTER PREMISES

Upon providing five (5) business days' notice, or immediately in case of emergency, Lessor reserves the right to inspect the Premises and improvements at any reasonable time throughout the term of this Agreement. Provided however, that Lessor's right of entry under this Article 19 is conditioned on not interfering with the rights of Lessee to use the Premises as provided in Article 3. Except in case of emergency, Lessee may deny Lessor a right of entry if Lessor's proposed entry would unduly interfere with Lessee's permitted use as defined in Article 3. When, for any reason, an entry is deemed necessary for emergency purposes, if Lessee is not present to permit such entry, Lessor and its agents and employees shall be permitted to enter the Premises and improvements. Lessor's agents or employees shall not be liable for any civil or criminal claims or cause of action for damage because of entering the Premises or improvements for emergency purposes at reasonable times and in a reasonable manner. Notwithstanding any provision in this Article 19, all entry by Lessor, or any agent of Lessor, shall be done in conformance with Washington state law.

20. ADDITIONAL RIGHTS AND OBLIGATIONS OF LESSEE

Lessee hereby covenants and agrees:

A. Lessee shall meet all expenses in connection with its operation at the Premises, and the rights and privileges herein granted, including without limitation by reason or enumeration, taxes, permit fees, license fees and assessments lawfully levied or assessed upon Lessee, and that it will secure all such permits and licenses.

B. Lessee shall keep and maintain the Premises in good condition, order and repair during the term of this Agreement, and to surrender the same upon the expiration of said term in the condition in which they are required to be kept, reasonable wear and tear and damage by casualty not caused by Lessee's negligence excepted.

21. LESSOR'S RIGHT OF CANCELLATION

In addition to any conditions as specified herein and all other remedies available to Lessor, this Agreement shall be subject to cancellation by Lessor should any one or more of the following occur:

A. If Lessee shall file a voluntary petition in bankruptcy, or proceedings in bankruptcy shall be instituted against Lessee and Lessee is thereafter adjudicated a bankrupt pursuant to such proceedings, or if a court shall take jurisdiction of Lessee and its assets pursuant to proceedings brought under the provisions of any Federal Reorganization or Bankruptcy Act, or if a Receiver for Lessee's assets is appointed, or if Lessee shall be divested of its rights, powers and privileges under this Agreement by other operation of law and such proceeding is not dismissed within sixty (60) days of filing.

B. If Lessee shall fail to perform keep and observe any of the applicable covenants and conditions contained in this Agreement, provided that upon the happening of any contingency recited in this Article 21, Lessee, shall be given written notice to correct or cure such default, failure to perform or breach. In the case of default, Lessor shall notify any lenders holding an interest in the leasehold improvements in accordance with any consent form executed by Lessor. If, within sixty (60) days from the date of such notice, the default, breach, or complaint shall not have been corrected in a manner satisfactory to Lessor, then and in such event, Lessor shall have the right to declare this Agreement terminated as to that area of the Premises affected by such default, breach, or complaint if not the whole Premises. Lessor does, however, reserve the right to extend the time period to correct the default, if, in its opinion, due diligence is shown by Lessee in curing the default.

C. If, under any of the provisions of this Agreement, Lessor shall have the right to reenter and take possession of the Premises, Lessor may enter and eject Lessee and those claiming through or under it and remove its property and effects, without being guilty of any manner of trespass; without any liability therefore, without prejudice to any remedies of Lessor in the event of default by Lessee; and without liability for any interruption of the conduct of the affairs of Lessee or those claiming through or under it.

## 22. LESSEE'S RIGHT OF CANCELLATION

In addition to all other remedies available to Lessee, this Agreement shall be subject to cancellation by Lessee should any one or more of the following occur:

- A. The permanent abandonment of Lessor.
- B. The breach by Lessor of any covenants, terms or conditions of this Agreement to be kept, performed and observed by Lessor and the failure to remedy such breach for a period of sixty (60) days after written notice from Lessee of the existence of such a breach.
- C. The occurrence of any event or events beyond the reasonable control of Lessee, including, but not limited to, any act of God or other supervening event which precludes Lessee from the use of the property for the purposes enumerated herein.

## 23. LEGAL CLAIMS AND ATTORNEY FEES

A. Each party hereto shall promptly report to the other any claim or suit against it arising out of or in connection with Lessee's operation at the Premises. Lessor and Lessee shall each have the right to compromise and defend the same to the extent of its own interest; provided the defense of the same has not been tendered and accepted by the other party. Lessee is an independent contractor in every respect, and not the agent of Lessor.

B. In the event either party requires the services of an attorney in connection with enforcing the terms of this Agreement or in the event suit is brought for the recovery of any rent, fees or other sum or charges otherwise payable by Lessee, this Agreement or the breach of any

covenant or condition of this Agreement, or for the restitution of the Premises to Lessor and/or eviction of Lessee during the term of this Agreement or after the expiration thereof, the prevailing party will be entitled to, consultants' fees, witness fees and other costs, both at trial and on appeal.

24. APPROVAL OR DIRECTION BY LESSOR

Wherever consent, approval or direction by Lessor is required under this Agreement, such consent, approval or direction by Lessor shall be effective if given by the Mayor, City Supervisor or designee in the manner set forth in this Agreement and such consent, approval or direction shall not be unreasonably withheld, conditioned or delayed.

25. LIENS OR ENCUMBRANCES

Lessee agrees that it shall pay, or cause to be paid, all costs and expenses for work done, materials delivered, and professional services provided to the Premises for improvements done at Lessee's request, during the leasehold term for improvements to the Premises. Lessee shall keep the Premises free and clear of all mechanic's or materialmen's liens or any other liens on account of any work done on the Premises at Lessee's request. Lessee agrees to and shall indemnify, and hold Lessor free from and harmless against all liability, loss, damage, cost, attorney's fees and all other expenses on account of claims of lien of laborers or materialmen, or others, for work performed or materials or supplies furnished to Lessee for use on the Premises. Lessor may require lien releases as a condition of approval.

26. ASSIGNMENT AND SUBLETTING

Lessee shall not in any manner, directly or indirectly, by operation of law or otherwise, assign, sublet, transfer or encumber any of Lessee's rights in and to this Agreement, or to the fixed improvements, or any interest therein, nor license or permit the use of the rights herein granted in whole or in part, without the prior written consent of Lessor. This prohibition includes, without limitation, any subletting or assignment which would otherwise occur by operation of law, merger, consolidation, reorganization, transfer or other change of Lessee's corporate, partnership or proprietary structure. Notwithstanding the above and provided that Lessee shall be in full conformance with the terms of this Agreement, including the payment of all fees, rent and charges, and other obligations, Lessee shall have the right to assign the Agreement and leasehold improvements to a limited liability corporation, a corporation with which it may merge or consolidate, or to any parent or subsidiary of Lessee's or subsidiary of Lessee's parent, or to a purchaser of substantially all of Lessee's assets, if the assignor executes an agreement acceptable to Lessor with an assignee which is acceptable to Lessor and which has the financial ability to perform and assume all of Lessee's obligations hereunder.

27. RIGHT OF FIRST REFUSAL

Lessor further agrees to grant Lessee a right of first refusal whereby Lessee can acquire the Premises at such time as Lessor arranges to sell the Premises; provided, however, this right shall not waive compliance with any required statutory or public process necessary for Lessor to sell the Premises.

28. SEVERABILITY

If any term or provision of this Agreement shall in any event be held invalid or unenforceable, the remaining terms and provisions of this Agreement shall not be affected thereby, but such terms and provisions of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

29. PRIOR AND COLLATERAL AGREEMENTS

This Agreement shall constitute the entire Agreement between the parties and no other stipulation, agreement or understanding, written or oral, expressed or implied of the parties hereto or of their agents, relating to the Agreement and use of the Premises demised herein, shall limit or modify its terms. This Agreement shall, as of the commencement date hereof, cancel and supersede all prior agreements, written or oral, expressed or implied, between the parties for the rights granted herein. This Agreement shall not be subject to modification or change except by written instrument duly signed.

30. SUBMISSION OF AGREEMENT

The submission of this document for examination and negotiation does not constitute an offer to lease, or a reservation of or option for leasing the Premises. This document shall become effective and binding only upon execution and delivery hereof by Lessor and Lessee. No act or omission of any officer, employee or agent of Lessor shall alter, change or modify any of the provisions hereof.

31. RELATIONSHIP OF LESSOR AND LESSEE

Nothing contained herein shall be deemed or construed as creating the relationship of principal and agent, partnership, or joint venture partners, and no provision contained in this Agreement nor any acts of Lessee and Lessor shall be deemed to create any relationship other than that of Lessee and Lessor.

32. NOTICES

All payments, demands and notices required herein shall be deemed to be properly served if hand delivered, or if sent by certified or registered mail, postage prepaid, to the address furnished by the parties hereto, until thereafter changed by the parties in writing, notices shall be addressed as follows:

LESSOR: City of Pullman  
Attn: Kevin Gardes, Public Works Director  
With a copy to: Dee Stiles-Elliott, City Clerk  
325 SE Paradise  
Pullman, WA 99163

LESSEE: Lumberyard Partners, LLC  
Attn: Greg Petry  
305 N. Grand Avenue  
Pullman WA 99163

The date of service of such notice shall be upon personal delivery, one (1) day after such notice is deposited with reliable overnight courier or three (3) days after such notice is deposited, postage prepaid, in a Post Office of the U.S. Postal Service.

33. TIME OF ESSENCE

It is mutually agreed that time is of the essence in the performance of all provisions and conditions to be kept and performed under the terms of this Agreement.

34. SURRENDER OF POSSESSION

In the event this Agreement is terminated due to default by Lessee or upon expiration of the initial term of this Agreement and any extended periods, Lessee shall remove all of its property defined as trade fixtures or personal property from the Premises and surrender the entire possession of its rights to Lessor.

35. NON-WAIVER OF BREACH

The waiving of any of the covenants of this Agreement by either party shall be limited to the particular instance and shall not be deemed to waive any other breaches of such covenants. The consent by Lessor to any act by Lessee requiring Lessor's consent shall not be deemed to waive consent to any subsequent similar act by Lessee.

36. SURVIVAL OF INDEMNITIES

All indemnities provided in this Agreement shall survive the expiration or any earlier termination of this Agreement. In any litigation or proceeding within the scope of any indemnity provided in this Agreement, Lessee may at the option of the Washington State Attorney General, defend Lessor at Lessee's expense by counsel satisfactory to Lessor.

37. APPLICABLE LAW; VENUE; WAIVER OF TRIAL BY JURY

This Agreement, and the rights and obligations of the parties hereto, shall be construed and enforced in accordance with the laws of the State of Washington. Jurisdiction and venue for any action on or related to the terms of this Agreement shall be exclusively in the Whitman County Superior Court for the State of Washington, and the parties irrevocably consent to the personal jurisdiction of such courts over themselves for the purposes of determining such action and waive any right to assert a claim for inconvenient forum. In any action on or related to the terms of this Agreement, the parties (for themselves and their successors and assigns) hereby waive any right to trial by jury and expressly consent to trial of any such action before the court.

38. PARAGRAPH HEADINGS

Paragraph headings contained herein are for convenience and reference only and are not intended to define or limit the scope of any provisions of this Agreement.

39. EXHIBITS

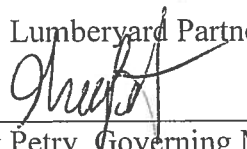
Any and all exhibits attached hereto or appended by mutual agreement at a later date shall, by this reference, be a part of this Agreement and binding upon the parties.

IN TESTIMONY WHEREOF, witness the signature of the parties hereto the day and year first above written.

LESSOR: City of Pullman

By: \_\_\_\_\_  
Mayor Glenn A. Johnson

LESSEE: Lumberyard Partners, LLC

By:  \_\_\_\_\_  
Greg Petry, Governing Member

ATTEST:

By: \_\_\_\_\_  
Dee Stiles-Elliott, City Clerk

[illegible]

GRAND AVENUE



## **EXHIBIT B**

A portion of Lot 4 of Block 49 of the Original Town of Pullman, T.14N, R.45E, W.M., as shown in Exhibit A, along with portions of a vacated alley lying adjacent to, and westerly of said Lot 4, excepting therefrom City Wellhouse No. 3, as shown in Exhibit A.

16. A RESOLUTION AUTHORIZING A TRANSIT AGREEMENT

\_\_\_\_\_  
STAFF REPORT \_\_\_\_\_

\_\_\_\_\_  
QUESTIONS FROM COUNCIL ON STAFF REPORT \_\_\_\_\_

\_\_\_\_\_  
RESOLUTION NO. R-60-18

A RESOLUTION AUTHORIZING THE EXECUTION OF AN AGREEMENT BETWEEN THE CITY OF PULLMAN AND WASHINGTON STATE UNIVERSITY FOR THE PURPOSE OF ESTABLISHING A PREPAID TRANSIT FARE PASS SYSTEM AND ENHANCED PUBLIC TRANSPORTATION SERVICES FOR WASHINGTON STATE UNIVERSITY STAFF, STUDENTS, FACULTY AND RETIREES FOR THE 2018-2019 SCHOOL YEAR.

\_\_\_\_\_  
DISCUSSION \_\_\_\_\_

\_\_\_\_\_  
ACTION TAKEN \_\_\_\_\_

NOTES:

## REQUEST FOR COUNCIL ACTION

For meeting of: July 17, 2018

### ACTION REQUESTED:

By resolution, approve the 2018-2019 transit fare pass agreement for the use of the city of Pullman public transportation system by Washington State University (WSU).

### BACKGROUND:

This agreement allows all WSU students, staff, faculty and retirees to ride all of the City of Pullman fixed-route services by showing a valid WSU ID card upon boarding a transit vehicle. The agreement also allows WSU authorized patrons to utilize the Dial-A-Ride service without paying a fare, if they qualify for the service. The agreement also defines and authorizes the provision of an enhanced level of public transportation services (Community Plus Service) consisting of expanded hours of operation, expanded and express routes and other services during those periods when WSU is in session during the Fall and Spring semesters.

To pre-pay the rides for the coming year, and invest in enhanced levels of service, this year's agreement will provide a base fee of \$2,196,778.08. This is an increase of approximately 3.5% from the 2017-2018 contract period.

### RECOMMENDATION:

Adopt the attached resolution authorizing the execution of the 2018-2019 Agreement for use of Public Transportation System and Enhanced Levels of Service between the City of Pullman and Washington State University.

### FISCAL IMPACT:

\$	<u>2,196,778.08</u>
	<u>405,344.74.00.01</u>
	BARS Code Number

### SUBMITTED BY:

### ATTACHMENTS FOR COUNCIL REVIEW/ACTION:

Name Wayne Thompson  
Title Transit Manager  
Dept. Public Works/Transit

Resolution No. R- 60 -18

### REVIEWED BY:

	Initial	Date
Department Head	<u>KST</u>	<u>7-6-18</u>
City Supervisor	<u>ARL</u>	<u>7.6.18</u>
City Attorney (As to Form)	<u>lmaj</u>	<u>7-6-2018</u>

RESOLUTION NO. R-60-18

A RESOLUTION AUTHORIZING THE EXECUTION OF AN AGREEMENT BETWEEN THE CITY OF PULLMAN AND WASHINGTON STATE UNIVERSITY FOR THE PURPOSE OF ESTABLISHING A PREPAID TRANSIT FARE PASS SYSTEM AND ENHANCED PUBLIC TRANSPORTATION SERVICES FOR WASHINGTON STATE UNIVERSITY STAFF, STUDENTS, FACULTY AND RETIREES FOR THE 2018-2019 SCHOOL YEAR.

WHEREAS, pursuant to Ch. 35.95 RCW and Pullman City Code Ch. 10.50, the City of Pullman ("City") owns and operates a public transportation system within a service area defined generally as its city limits ("Pullman Transit"), and, further, has the authority under RCW 39.33.050 to contract with any other municipal corporation or political subdivision of the state for the provision of public transportation services, under such terms and conditions and upon the payment of such fees and charges as the City Council may determine; and,

WHEREAS, the City and Washington State University ("WSU") desire to continue to improve mobility options, help residents avoid the cost of operating a motor vehicle, reduce the community's carbon footprint, help the community avoid traffic congestion and negative impacts on air quality, and reduce the number of single-occupant vehicle trips within the Pullman Transit service area; and,

WHEREAS, it appears mutually advantageous to the City and WSU to encourage the students, faculty, and staff of WSU, as well as members of other support activities on the WSU campus, to use Pullman Transit to travel to, from, and on the campus of WSU, further strengthening the connection between City and WSU through the provision of enhanced public transportation services during the fall and spring semesters of the academic year and through the use of WSU-issued identification cards as a transit fare pass system on Pullman Transit; and,

WHEREAS, the City Council for the city of Pullman has before it an agreement entitled 2018-2019 Agreement for Use of Public Transportation System and Enhanced Levels of Service ("Agreement") which is attached hereto as Exhibit "A"; and,

WHEREAS, the City Council believes it is in the best interests of the City to authorize the execution of said Agreement; now, therefore,

IT IS HEREBY RESOLVED by the City Council of the city of Pullman that the Agreement is hereby approved.

BE IT FURTHER RESOLVED that the Mayor and the city clerk are hereby authorized and directed to execute the Agreement attached

hereto as Exhibit "A" and to deliver an executed original thereof to Washington State University.

IT IS FURTHER RESOLVED that the Mayor and city clerk are hereby authorized and directed to take such further action as may be appropriate in order to effect the purpose of this Resolution and the Agreement authorized thereby.

ADOPTED by the City Council of the city of Pullman at a regular meeting held on the \_\_\_\_\_ day of \_\_\_\_\_, 2018.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2018.

\_\_\_\_\_  
Mayor Glenn A. Johnson

ATTEST:

\_\_\_\_\_  
City Clerk Dee Stiles-Elliott

Approved as to Form:

\_\_\_\_\_  
City Attorney Laura D. McAloon

**2018-2019 AGREEMENT FOR USE OF PUBLIC TRANSPORTATION SYSTEM AND  
ENHANCED LEVELS OF SERVICE**

**THIS AGREEMENT** (the “Agreement”) is made and entered into by and between the City of Pullman, Washington, a municipal corporation of the state of Washington (hereinafter “CITY”), and Washington State University, an institution of higher education and agency of the state of Washington (hereinafter “WSU”).

RECITALS

WHEREAS, pursuant to Ch. 35.95 RCW and Pullman City Code Ch. 10.50, CITY owns and operates a public transportation system within a service area defined generally as its city limits, and, further, has the authority under RCW 39.33.050 to contract with any other municipal corporation or political subdivision of the state for the provision of public transportation services, under such terms and conditions and upon the payment of such fees and charges as the City Council may determine; and,

WHEREAS, both CITY and WSU desire to continue to improve mobility options, help residents avoid the cost of operating a motor vehicle, reduce the community’s carbon footprint, help the community to avoid traffic congestion and negative impacts on air quality, and reduce the number of single occupant vehicle trips within the Pullman Transit service area; and

WHEREAS, it appears mutually advantageous to both CITY and WSU to encourage the students, faculty, and staff of WSU, as well as members of other support activities on the WSU campus to use the public transportation system operated by the CITY to travel to, from, and on the campus of WSU, further strengthening the connection between CITY and WSU through the provision of enhanced public transportation services during the Fall and Spring semesters of the academic year and through the use of WSU-issued identification cards as a transit fare pass system.

Exhibit “A”

NOW, THEREFORE, in consideration of the foregoing recitals and the promises and covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

### SECTION 1: DEFINITIONS

As used in this Agreement, the following terms shall have the following meanings:

- 1.1 Pullman Transit means the public transportation system operated by CITY consisting of a Fixed-Route Service component and a Dial-A-Ride Service component.
- 1.2 Dial-A-Ride Service means the demand/response service component of Pullman Transit, which provides senior citizens and individuals with disabilities public transportation services, is offered during the same hours as the Fixed-Route Service, does not operate on a fixed route, provides service to an area which is at least within three-quarters of a mile from any Fixed-Route Services and within the CITY service area and meets all other applicable state and federal requirements.
- 1.3 Fixed-Route Service means the service component of Pullman Transit which operates on fixed routes.
- 1.4 Eligible Riders means faculty, staff, students, and other authorized persons as determined by WSU who present a Valid Fare Instrument upon boarding a Pullman Transit vehicle.
- 1.5 Community Service means the standard year-round public transportation service provided by CITY between the hours of 6:30 AM and 6:45 PM, Monday through Friday, and on Saturdays and Sundays between the hours of 10:00 AM and 5:30 PM throughout the calendar year, except on legal holidays as determined by CITY.
- 1.6 Community Plus Service means the enhanced public transportation service, above and beyond that provided in Community Service, provided by CITY Monday through Friday between the hours of 6:45 PM and 12:00 AM (Midnight), and on Saturday between the hours of 9:15 AM and 10:00 AM and 5:30 PM and 12:00 AM (Midnight) during the Fall and Spring semesters of the WSU academic year, except on legal holidays as determined by CITY, pursuant to this Agreement.
- 1.7 Valid Fare Instrument means any WSU issued Cougar Card or a WSU Rider Card issued by WSU Transportation Services, except a "Community Member" Cougar Card.

SECTION 2: USE OF PULLMAN TRANSIT SERVICES UPON PRESENTATION OF  
VALID FARE INSTRUMENT

- 2.1 Use—Fixed-Route Service. During the Term of this Agreement and consistent with any extensions or modifications subsequently made thereto, Eligible Riders may use any Fixed-Route Service of Pullman Transit at any time the service operates without the payment of a fare upon boarding a Pullman Transit bus by displaying to the transit bus driver a Valid Fare Instrument.
- 2.2 Use—Dial-A-Ride Service. During the Term of this Agreement and consistent with any extensions or modifications subsequently made thereto, Eligible Riders who, to the satisfaction of representatives of CITY, satisfy the requirements established by CITY for use of the Dial-A-Ride Service, may use the Dial-A-Ride Service in accordance with standard Pullman Transit policies without the payment of any fare upon boarding a Dial-A-Ride vehicle by displaying to the driver thereof a Valid Fare Instrument.
- 2.3 Refusal of Use. All Eligible Riders shall comply with all rules and regulations of Pullman Transit while using the public transportation system. Notwithstanding the provisions of 2.1 and 2.2 herein, any Eligible Rider who, by their actions while boarding, riding, or exiting from a Fixed-Route Service vehicle or a Dial-A-Ride Service vehicle is, in the opinion of the driver of that vehicle, disruptive to the safe and orderly operation of a Fixed-Route Service or a Dial-A-Ride Service, may be refused further service on Pullman Transit for such a period of time and upon such conditions as CITY in its sole discretion considers appropriate and consistent with the safe and orderly operation of Pullman Transit.

SECTION 3: SERVICE LEVELS – COMMUNITY SERVICE AND COMMUNITY PLUS  
SERVICE

- 3.1 Manner of Operation. CITY has the sole and exclusive right to operate Pullman Transit in a manner it considers appropriate to serve the transportation needs of persons using or desiring to use Pullman Transit pursuant to this agreement.
- 3.2 Standard Service Levels - Community Service. Pullman Transit provides its standard Community Service using the Fixed-Route Services described in Table 1, together with



complementary Dial-a-Ride Services during all service hours and operational areas in which Community Service is provided.

- 3.3 Enhanced Service Levels - Community Plus Service. In addition to Community Service described in 3.2, Pullman Transit provides enhanced service known as Community Plus Service using the Fixed-Route Services identified as Community Plus Service in Table 1, together with complementary Dial-a-Ride Services during all service hours and operational areas in which Community Plus Service is offered.

Table 1

Pullman Transit service levels, effective August 2018	Community Service (standard service)	Community Plus Service (enhanced service)
Monday through Friday	6:30am to 6:45pm <ul style="list-style-type: none"> <li>• Loop</li> <li>• Silver</li> <li>• Blue</li> <li>• Paradise</li> <li>• Dial-A-Ride</li> </ul>	6:30am to 6:45pm <ul style="list-style-type: none"> <li>• Loop</li> <li>• Silver</li> <li>• Blue</li> <li>• Paradise</li> <li>• Dial-A-Ride</li> </ul> 7:15am to 10:15am <ul style="list-style-type: none"> <li>• Coffee Route</li> </ul> 6:45am to 8:40pm <ul style="list-style-type: none"> <li>• Coug Express</li> <li>• Crimson Express</li> <li>• Gray Express</li> </ul> 6:30pm to midnight <ul style="list-style-type: none"> <li>• Lentil</li> <li>• Wheat</li> <li>• Dial-A-Ride</li> </ul>
Saturday	10:00 am to 5:30pm <ul style="list-style-type: none"> <li>• Lentil</li> <li>• Wheat</li> <li>• Dial-A-Ride</li> </ul>	9:15am to midnight <ul style="list-style-type: none"> <li>• Lentil</li> <li>• Wheat</li> <li>• Dial-A-Ride</li> </ul>
Sunday/Holiday*  *Pullman Transit is closed on New Year's Day, Thanksgiving Day, and Christmas Day	10:00 am to 5:30pm <ul style="list-style-type: none"> <li>• Lentil</li> <li>• Wheat</li> <li>• Dial-A-Ride</li> </ul>	10:00 to 5:30pm <ul style="list-style-type: none"> <li>• Lentil</li> <li>• Wheat</li> <li>• Dial-A-Ride</li> </ul>

SECTION 4: FEES FOR USE OF PULLMAN TRANSIT SERVICES AND ENHANCED  
PUBLIC TRANSPORTATION SYSTEM SERVICES

- 4.1 Payment for Service. WSU agrees to compensate CITY for the services provided pursuant to this Agreement as set forth on the schedule below. The CITY will invoice WSU on or before the 10<sup>th</sup> day of the month following each of the months listed below, and WSU will pay CITY within thirty (30) days of receipt of such invoice, the following fees:

Month	Fee	% of Total
August 2018	219,677.81	10%
September 2018	219,677.81	10%
October 2018	219,677.81	10%
November 2018	219,677.81	10%
December 2018	219,677.81	10%
January 2019	219,677.81	10%
February 2019	219,677.81	10%
March 2019	219,677.81	10%
April 2019	219,677.81	10%
May 2019	219,677.81	10%
Total Fee	\$ 2,196,778.08	100%

- 4.2 Fee for Additional Fixed-Route Service or Increased Dial-a-Ride Demand. Any additional service that is not listed in Table 1 is subject to Pullman City Council approval. WSU currently provides special on-campus transportation services to students with disabilities with its Cougar Accessible Transit (CAT) service between the hours of 7:30 AM and 5:00 PM, Monday through Friday, year-round except for University holidays, and the fees described in section 4.1 do not include the cost of providing regular on campus Dial-a-Ride services. The parties agree to negotiate the amount of any additional financial support required in the unlikely event that WSU discontinues its CAT service. WSU agrees to pay CITY the fee of \$78.40 per hour per bus for additional requested service that falls outside

of service described in Table 1. CITY will add the cost of additional service to the fees described in section 4.1.

## SECTION 5: COMMUNICATIONS

- 5.1 Reports. CITY will provide WSU with ridership data on a monthly basis.
- 5.2 Parties Agree to Meet. The parties shall meet monthly to monitor the performance of this Agreement. The Transit Manager will be the lead for the CITY, and the Director of Transportation will be the lead for WSU.
- 5.3 Notice. Any notice or other communication required to be given hereunder shall be deemed sufficient if in writing and delivered personally or sent by email or mail, return receipt requested, and postage prepaid to the addressees as follows:

TO CITY:

Transit Manager  
City of Pullman  
775 NW Guy Street  
Pullman, WA 99163

TO WSU:

Director, Transportation  
P.O. Box 645500  
Washington State University  
Pullman, WA 99164-5500

With a copy to:

Finance Director  
City of Pullman  
325 SE Paradise St  
Pullman, WA 99163

With copy to:

Finance and Administration, Contracts  
Washington State University  
P.O. Box 641045  
Pullman, WA 99164

## SECTION 6: EFFECTIVE DATE, TERM, AND TERMINATION

- 6.1 Effective Date. This Agreement shall be effective from and after the date on which the authorized representatives of the last of the parties hereto signs this Agreement (the "Effective Date").
- 6.2 Term. The Term of this Agreement shall be for a period commencing on the latter of the Effective Date or August 1, 2018 through July 31, 2019 (the "Term").

- 6.3 Termination for Cause. Should either party fail to abide by any substantial promise or covenant in this Agreement, the non-breaching party shall be entitled to terminate this Agreement by giving ninety (90) calendar days' notice of default to the other party, and the non-breaching party's election to terminate the Agreement; provided, however, if the breach is cured to the reasonable satisfaction of the non-breaching party prior to expiration of the ninety (90) calendar day notice period, the Agreement shall continue in full force and effect. All outstanding fees owed to the CITY by WSU up to the effective date of termination must be paid within sixty (60) days of termination of this Agreement.

#### SECTION 7: MISCELLANEOUS

- 7.1 Amendments, Modifications, or Extensions. This Agreement represents the entire Agreement between CITY and WSU and supersedes all prior negotiations, representations, or agreements, either written or oral. This Agreement may be amended, modified, or extended beyond its Term only by written instrument signed by the authorized representatives of both CITY and WSU.
- 7.2 Additional Funding - Notice. The City agrees to advise WSU of any additional funding it may receive from the State or from federal grants. The Transit Manager will notify the Director of Transportation Services of the receipt of additional funds and advise her/him of the CITY's plans for using the additional funds. If needed, the Parties will meet to discuss the planned use of the additional funds. This notification will in no way preclude the CITY from the exclusive right to operate Pullman Transit in a manner it considers appropriate to serve the transportation needs of persons using or desiring to use Pullman Transit.
- 7.3 Nondiscrimination. In administering this Agreement, CITY and WSU will comply with all federal and state nondiscrimination laws, regulations and policies.
- 7.4 Independent Contractor. CITY is an independent contractor, and nothing contained herein is intended to create or imply a joint venture, partnership or employer/employee relationship between the parties. The employees and/or agents of each party who are engaged in the performance of this Agreement shall continue to be employees and agents of that party and shall not be considered for any purposes to be the employees or agents of the other party.

- 7.5 Insurance. CITY agrees to maintain a general liability policy of insurance of at least \$1,000,000 per occurrence, and \$2,000,000 aggregate, during the time this Agreement is in effect.
- 7.6 Indemnification. Each party in this Agreement shall be responsible for the acts and/or omissions of itself, and its officers, employees, and agents. Neither party to this Agreement shall be responsible for the acts and/or omissions of those not a party to this Agreement.
- 7.7 Disputes. CITY and WSU will, prior to institution of litigation of any dispute under this Agreement, seek mediation of the dispute(s) upon selection of a mutually acceptable mediator. If the parties cannot agree on a mediator, each party will individually select a mediator, and those two mediators will jointly select a third mediator, and the three mediators shall jointly make a determination of the dispute. The costs of mediation, if any, will be shared equally between the parties.
- 7.8 Governing Law. This Agreement is governed by and shall be construed in accordance with the laws of the state of Washington.
- 7.9 Assignment. This Agreement, and the rights and obligations hereunder, are not assignable or delegable by either party in whole or in part, without the express prior written consent of the other party.

*[This Space Left Intentionally Blank]*

7.10 Severability. In the event that any one or more of the provisions contained herein shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions of this agreement, but this agreement shall be construed as if such invalid, illegal or unenforceable provisions had never been contained herein, unless the deletion of such provision or provisions would result in such a material change so as to cause completion of the transactions contemplated herein to be unreasonable.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement by their duly authorized representatives on the dates indicated below.

**CITY OF PULLMAN**

Approved by:

\_\_\_\_\_  
Glenn A. Johnson  
Mayor

Date: \_\_\_\_\_

Attest:

\_\_\_\_\_  
Dee Stiles-Elliott  
City Clerk

Date: \_\_\_\_\_

Approved as to Form:

\_\_\_\_\_  
Laura D. McAloon  
City Attorney

Date: \_\_\_\_\_

**WASHINGTON STATE UNIVERSITY**

Recommended by:

\_\_\_\_\_  
John Shaheen  
Director, Transportation Services

Date: June 19, 2018

Approved by:

\_\_\_\_\_  
Stacy Pearson  
Vice President for Finance and  
Administration

Date: June 21, 2018

Approved as to Form:

\_\_\_\_\_  
Sherry Gordon, Senior Counsel  
Assistant Attorney General

Date: June 19, 2018

17. A DISCUSSION TO CONSIDER CONVERTING A DRIVING POSITION TO  
EXTRABOARD STATUS.

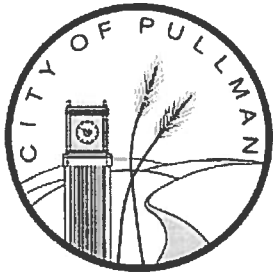
STAFF REPORT

QUESTIONS FROM COUNCIL ON STAFF REPORT

## DISCUSSION

ACTION TAKEN

NOTES:



# CITY OF PULLMAN

## Pullman Transit and Dial-A-Ride

775 N.W. Guy Street, Pullman, WA 99163  
Transit (509) 332-6535      Dial-A-Ride (509) 332-5471  
Fax (509) 332-6590      [www.pullmantransit.com](http://www.pullmantransit.com)

**TO:** Mayor and City Council  
**FROM:** Wayne Thompson, Transit Manager  
**RE:** Consideration for converting a driving position to “extraboard” status  
**DATE:** For July 17, 2018, City Council Meeting

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Absenteeism in the transit industry can be a challenge with the work needing to be done now, and not delayed until the employee’s return. A morning Dispatcher’s recurring nightmare is to arrive each morning to a flashing light on the phone, and a message left by a sick Driver setting off the shift-filling frenzy. On top of the stress of fast-paced, early morning shift shuffling and upgrades, the end result is often overtime for a replacement Driver.

Occasional overtime is to be expected, and one of the perks that senior Drivers come to expect. But, a remedy to the inefficiencies caused by one of Transit’s biggest issues, absenteeism, is needed. Across the industry, the solution seems to be the same – the Extraboard Driver, another name for a backup Driver.

Pullman Transit has used a version of the Extraboard scenario before, since 2012, and has experienced some success. We found that by comparing a sample three-week period from 2015 (when fully staffed and the Extraboard shift filled), with that same three-week period in 2018 (when the shift was vacant), overtime costs tripled when the shift was not filled. At the end of June, our 50% mark for the annual budget, 60% of our overtime budget has been expended.

The issue is that we currently only offer a two-hour-per-day (10 hour weekly) guarantee for the Extraboarder. When we have less than our full force of 32 Drivers, this is the shift that goes unfilled. The industry standard is to make this position full time, or close to it, so that the position always remains filled and employees are available when needed to fill morning and early afternoon shifts. The six hour guarantee can be extended to 10 hours, as longer shifts become available. When not driving, we intend to find productive work, such as bus fueling, for the employee.

We acknowledge the cost of upgrading a current half-time Driver position to three-quarter time will be \$7,000 annually (assuming this Driver has a family, and takes full insurance benefits). At the same time, we calculate that with overtime savings the investment will be realized in just over 10 weeks’ time.

Our recommendation is to maintain the current staffing level of 32 Drivers, but shift current half-time Extraboard and excessive overtime hours to form a three-quarter time Extraboard position. This change would occur in August, and allow a more efficient means of shift filling, and cost-effective way of providing service to our public.

Staff is asking for Council input and direction.